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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,170	12/30/2003	Daniel Gregorich	S63.2-11233US01	7868
490 7590 09/19/2007 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344			EXAMINER TYSON, MELANIE RUANO	
			ART UNIT 3731	PAPER NUMBER
			MAIL DATE 09/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/749,170	GREGORICH, DANIEL	
	Examiner	Art Unit	
	Melanie Tyson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is in response to Applicant's amendment received on 29 August 2007.

#### ***Response to Arguments***

1. Applicant's arguments filed 29 August 2007 regarding the restriction requirement have been fully considered but they are not persuasive. Applicant argues primarily that the characterization of the elected species in the office action dated 30 May 2007 is different from the characterization in the original restriction requirement dated 26 February 2007. Examiner respectfully disagrees.

The restriction requirement was characterized by Figures in the office action dated 26 February 2007, in which species I is depicted in Figure 1, species II in Figure 2, species III in Figure 3, and species IV in Figure 4. This characterization remained the same in the office action dated 30 May 2007. The "language" in the office action dated 30 May 2007 was utilized simply to describe to the Applicant how the limitations of claims 8 and 9 did not read the elected species and did read on the non-elected species. A re-characterization of species was not conducted as stated by the Applicant.

2. Applicant's arguments with respect to claims 1-7 and 10-20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-7 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berra et al. (2004/0215319 A1) in view of Khosravi et al. (6,290,720 B1).

Berra discloses a stent (see entire document) comprising a plurality of closed circumferential serpentine bands formed of a single piece of material, where the strut length gradually increases and decreases around the circumference of each band (for example, see Figures 2A and 4). The struts of maximum length and minimum length are generally longitudinally aligned (for example, see the Figures and paragraphs 41-47). Berra fails to disclose connecting elements.

Khosravi discloses a device (see entire document) comprising a plurality of closed circumferential serpentine bands formed of a single piece of material (for example, see Figure 2). Khosravi teaches it is well known in the art to utilize connecting elements (34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Berra as taught by Khosravi. Doing so would provide a connection between the serpentine bands (for example, see column 4, lines 62-66), thus providing alignment between bands.

With further respect to claims 11, 12, and 14, Berra in view of Khosravi fails to disclose the connecting elements have curved portions, including a peak and a valley, or are nonparallel to a central longitudinal axis of the device. Applicant discloses the connecting element may comprise a curved element, or a straight element, which Berra in view of Khosravi discloses. Furthermore, it is well known in the art to provide connecting elements of different shapes and at different angles (for example, see Yip et al. 2004/0230293 A1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made as a matter of design choice to modify the

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shape and angle of the of connecting elements of Berra in view of Khosravi to obtain the invention as specified in claims 11, 12, and 14.

With further respect to claims 13 and 16, Berra in view of Khosravi fails to disclose connecting elements of different lengths and maximum length struts having different lengths. It would have been an obvious matter of design choice to provide these modifications, since such modifications would have involved a mere change in size of the components. A change in size is generally recognized as being within the level of ordinary skill in the art.

With further respect to claims 4-7, it is well known in the art to provide serpentine bands having different geometries, wherein the geometries include those as claimed in claims 4-7 (for example, see Brown's 2002/0007212 A1). Therefore, it would have been obvious as a matter of design choice to arrange the serpentine bands as claimed in claims 4-7.

With further respect to claim 20, Applicant discloses the struts of greater flexibility may be thinner than the remaining struts, or longer than the remaining struts, which Berra in view of Khosravi discloses. Furthermore, it is well known in the art to provide struts of varying thickness (for example, see Oepen's 2002/0161428). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made as a matter of design choice to modify the thickness of the struts of Berra in view of Khosravi to obtain the invention as specified in claim 20.

***Conclusion***

5. Applicant's amendment filed 13 November 2006 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 8:30-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson   
September 4, 2007

  
(JACKIE) TAN-UYEN HO  
SUPERVISORY PATENT EXAMINER